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JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. _____

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SARA BAIRD, *Petitioner*,

v.

STATE BAR OF ARIZONA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE
ARIZONA SUPREME COURT

ROBERT H. ALLEN

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Bank Building

Phoenix, Arizona

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over

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. _____

SARA BAIRD, *Petitioner*,

v.

STATE BAR OF ARIZONA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

Sara Baird petitions for a writ of certiorari to review the judgment of the Arizona Supreme Court entered in this case on January 14, 1969.

Opinion Below

The judgment of the Arizona Supreme Court is unreported and is without opinion. The Arizona Supreme Court's judgment is evidenced by an order entered in the record denying Sara Baird's petition for admission to the State Bar of Arizona. Appendix A, *infra* at 1a.

Jurisdiction

The judgment of the Arizona Supreme Court was entered on January 14, 1969. Appendix A, *infra* at 1a.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3). This Court has jurisdiction to review exclusions from bar associations when federal questions are involved. *E.g., Konigsberg v. State Bar of California*, 366 U.S. 36 (1961).

Question Presented

May a fully qualified applicant for admission to the bar, who has identified all organizations with which she has been affiliated since becoming 16, be excluded from the practice of law solely because she refuses to answer the further question, "Are you now or have you ever been a member of the Communist Party or any organization that advocates overthrow of the United States Government by force or violence?," particularly when the express purpose for that question is to inquire into her beliefs and views? The applicant's refusal to answer this question is based upon the guarantee of freedom of speech and of association under the First Amendment of the United States Constitution, the self-incrimination clause of the Fifth Amendment of the United States Constitution, as made applicable to the states by the Fourteenth Amendment of the United States Constitution, and the due process clause of the Fourteenth Amendment of the United States Constitution.

Constitutional Provisions, Statutes and Rules Involved

The relevant portions of the First Amendment, the Fifth Amendment and the Fourteenth Amendment of the United States Constitution, ARIZ. REV. STAT. ANN. § 13-561, ARIZ. REV. STAT. ANN. § 13-707(C) (Supp. 1969), and ARIZ. S. CT. R. 28(c) (Supp. 1969) are set forth in Appendix B, *infra* at 2a-3a.

Statement of the Case

Petitioner, Sara Baird, graduated from Stanford University Law School in June, 1967. In February, 1968 she took the Arizona Bar examination, which she passed.* Subsequently, the State Bar Committee on Examinations and Admissions (hereinafter referred to as the "Committee"), refused to process her application further and to recommend her for admission to the Arizona State Bar Association.

The Committee's position was based solely upon the fact that petitioner declined to answer question 27 of the document known as "Applicant's Questionnaire and Affidavit," which is set forth in Arizona Supreme Court Rule 28(c) (Supp. 1969). See Appendix B, *infra* at 3a; Committee Response ¶2, Appendix C, *infra* at 7a. Question 27 reads as follows: "Are you now or have you ever been a member of the Communist Party or any organization that advocates overthrow of the United States Government by force or violence?"

On the same "Questionnaire and Affidavit" petitioner did respond to and comply with question 25, which reads as follows: "List all organizations, associations, and club [sic] (other than Bar associations) of which you are or have been a member since attaining the age of sixteen years." Appendix B, *infra* at 3a.

The Committee's express purpose in requiring an an-

* The State Bar Committee on Examinations and Admissions has admitted that the only reason for its refusal to recommend her for membership in the bar is her failure to answer the question, the constitutionality of which is challenged by this petition (Petition ¶1, ¶2, Committee Response ¶2, Appendix C, *infra* at 4a-5a and 7a), and its acknowledgment that if she answered the question to the Committee's satisfaction, the Committee would have no legal basis upon which to exclude her from the practice of law. Committee Memorandum at 8, Appendix C, *infra* at 9a-10a.

swer to question 27 was not to discover petitioner's past or present conduct but rather to assure the Committee that petitioner does not adhere to an unorthodox political belief. The purpose behind question 27 is made clear by the Committee's Memorandum, which was filed with the court below and which contains the following excerpts:

"Unless we are to conclude that one who truly and sincerely *believes* in the overthrow of the United States Government by force and violence is also qualified to practice law in our Arizona courts, then an answer to this question is indeed appropriate. The Committee again emphasizes that a mere answer of 'yes' would not lead to an automatic rejection of the application. It would lead to an *investigation and interrogation* as to *whether or not the applicant presently entertains the view* that a violent overthrow of the United States Government is something to be sought after. *If the answer to this inquiry was 'yes' then indeed we would reject the application and recommend against admission.*" Committee Memorandum at 3, Appendix C, *infra* at 9a (emphasis supplied).

"I also believe that Mrs. Baird should realize that even though she answered the question that she had at one time been a Communist or had otherwise been associated with organizations not regarded as friendly to the United States Government, this would not necessarily cause us to reject her application. *We would undoubtedly want to ask her some questions as to her present beliefs* and as to other matters which would bear upon the effect such membership would have on her qualifications to practice law." *Id.* at 1, Appendix C, *infra* at 9a (emphasis supplied).

"The Committee would again emphasize to this Court that if the answer to question No. 27 is 'yes' *the committee will then endeavor to ascertain if Sara Baird does adhere to the view* that the overthrow of the Government of this State and of the United States by force and violence would be a desirable objective and that

she would expect to actively support such views. If this is the conclusion reached by the Committee, it will undoubtedly refuse to recommend Sara Baird for admission to the Bar of the State of Arizona. Should the conclusion be that her membership is of a nominal character and that she does not participate and adhere to the views that a violent overthrow of our government is desirable, then the Committee would have no legal basis for refusing to recommend her for admission. . . ." *Id.* at 7-8, Appendix C, *infra* at 9a-10a (emphasis supplied).

Under the review procedure outlined in Arizona Supreme Court Rule 28(c) (Supp. 1969), petitioner filed a verified petition and a memorandum of points and authorities with the Arizona Supreme Court on December 20, 1968. This petition reads in part as follows:

"... to require petitioner to answer Question No. 27 as a condition to processing her application for admission to the State Bar of Arizona or as a condition to admission to the Bar is a violation of petitioner's rights under the Constitution of the State of Arizona and under the Constitution of the United States, particularly the First Amendment, as to freedom of speech and association, the Fifth Amendment, as to self-incrimination, and the Fourteenth Amendment, as to due process of law and equal protection, both separately and as making applicable to state action the First and Fifth Amendments to the United States Constitution." Petition ¶4, Appendix C, *infra* at 5a.

Thereafter, an order to show cause was issued, directing the Committee to show cause "... why petitioner's application should not be processed by the Committee without requiring of petitioner any further answer to Question No. 27 of Applicant's Questionnaire and Affidavit." Order to Show Cause at 1. Subsequently, the Committee filed its response, together with a memorandum of points and authorities, admitting that the refusal to

answer question 27 was the reason for not processing her application or for recommending her for membership in the Bar Association, and denying that petitioner's constitutional rights were infringed by making an answer to question 27 prerequisite for permission to practice law in Arizona. *See generally* Committee Response, Appendix C, *infra* at 7a-8a.

On January 14, 1969, oral argument was presented to the Arizona Supreme Court. Subsequently, the Arizona Supreme Court entered, without opinion, a denial of Sara Baird's petition. The issue in the petition was whether constitutional rights had been denied; and no state ground, adequate or otherwise, was raised by the Committee. *Cf. Konigsberg v. State Bar*, 353 U.S. 252, 257 (1957). It is "... presumed that the state court based its judgment on the law raising the Federal question, and this court will then take jurisdiction." *Klinger v. Missouri*, 13 Wall. 257, 263 (1871; *See* STERN AND GRESSMAN, SUPREME COURT PRACTICE § 3-32 at 108-09 (3rd ed. 1962)).

Reasons for Granting the Writ

Sara Baird is a young woman who has met all of the requirements for admission to the State Bar of Arizona. However, she declines to answer question 27, which requires her to tell the Committee whether she has ever been "... a member of the Communist Party or any organization that advocates overthrow of the United States Government by force or violence." According to the Arizona Supreme Court, she can be kept from practicing law for this refusal.

Question 27 orders petitioner to go beyond question 25, which required her to list all organizations with which she has been associated since the age of 16. Ques-

tion 27 requires her to make a judgment, under penalty of perjury, whether any group to which she belongs or has belonged is the Communist Party or is an organization which advocates the overthrow of the United States Government by force or violence. ARIZ. REV. STAT. ANN. § 13-561 (Arizona perjury statute), Appendix B, *infra* at 2a.

The Committee's purpose for requiring an answer to question 27 is not to gather information about petitioner's associations because she has already listed these in response to question 25. Furthermore, question 27 is not used to ascertain whether petitioner has engaged in illegal conduct. Instead, the Committee's purpose in requiring an answer to question 27 is to determine whether petitioner subscribes to unorthodox "beliefs" or "views."

As stated by the Committee, if ". . . the applicant *presently entertains the view* that a violent overthrow of the United States Government is something to be sought after . . . *then indeed we would reject the application and recommend against admission.*" Committee Memorandum at 3, Appendix C, *infra* at 9a (emphasis supplied). In fact, the premise upon which an answer to question 27 is deemed "appropriate" by the Committee is that belief alone can disqualify one from practicing law: "*Unless we are to conclude that one who truly and sincerely believes in the overthrow of the United States Government by force and violence is also qualified to practice law in our Arizona courts, then an answer to this question is indeed appropriate.*" *Id.* (emphasis supplied).

A. *The Decision Below Conflicts with Applicable Decisions of This Court.*

1. The decision below conflicts with *Schneider v. Smith*, 390 U.S. 17 (1968), insofar as it is grounded on

the First Amendment. This Court held in *Schneider* that a person who applied for a license to act as a second assistant engineer on merchant vessels and who disclosed some of his memberships could decline to answer additional interrogatories requesting the names and details of his "political and social organizations," his "attitude" toward various organizations and principles, and his activities and subscriptions with the "People's World." *Id.* at 20 n.2.

One of *Schneider's* basic points was that the First Amendment ". . . creates a preserve where the views of the individual are made inviolate." *Id.* at 25 (emphasis supplied).^{*} In the present case, the Committee's express rationale for question 27 is to inquire into "beliefs" and "views." Committee Memorandum at 1, 8, Appendix C, *infra* at 9a-10a. In terms of disclosing names of organizations to which she has been associated, petitioner has divulged as much as *Schneider*. Whereas *Schneider* refused to answer the specific interrogatories about his associations, petitioner declines to characterize any of her listed organizations as the Communist Party or as an organization that advocates overthrow of the Government by force or violence. If the Commandant of the Coast Guard in *Schneider* was not justified in refusing ". . . to process the application further . . .," then the Committee cannot be justified in refusing to process petitioner's application further. *Id.* at 21, 25; see *Shelton v. Tucker*, 364 U.S. 479 (1960).

2. The decision of the Arizona Supreme Court below

^{*} "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

also conflicts with the result reached in *Spevack v. Klein*, 385 U.S. 511 (1967). This Court in *Spevack* held that a lawyer who claimed the Fifth Amendment privilege could not be disbarred for refusing to honor a subpoena duces tecum and for declining to answer questions posed by a bar committee. Therefore, under *Spevack*, a lawyer may *not* be disbarred for refusing to answer a question on the grounds of a Fifth Amendment privilege. By the decision below, an applicant for admission to practice law *may* be excluded for claiming a First Amendment and Fifth Amendment right to refuse to answer a question. The personal effect of the refusal is the same in both cases, and the result must also be the same. Denial to an applicant of the right to practice law and disbarment of a lawyer have been recognized as being essentially the same thing. *Id.* at 521 (dissent) ("... I can perceive no distinction between 'admission' and 'disbarment' in the rationale of what is now held."); *Cohen v. Hurley*, 366 U.S. 117, 123 (1961).

An absurdity is created by the coexistence of *Spevack* with the decision below. The lawyer who claims self-incrimination may refuse to answer a question on that ground and will nonetheless remain a member of the bar. The applicant who declines to answer a question because of both First Amendment and Fifth Amendment rights will be excluded from the bar. For example, a member of the Arizona Bar who is also a member of the Communist Party could claim a Fifth Amendment right to remain silent and, under *Spevack v. Klein, supra*, would retain the right to practice law. See ARIZ. REV. STAT. ANN. § 13-707(C) (Supp. 1969) ("A person who knowingly or wilfully becomes or remains a member of the Communist Party . . . is guilty of sedition against the state."), Appendix B, *infra* at 2a-3a. On the other hand, a

person who applies for membership in the state bar but who refuses to pass judgment on the quality of her associations on both First and Fifth Amendment grounds will be denied the right to practice law. This paradox warrants solution.

3. The decision below also clashes with the due process principle of *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957), wherein this Court stated that any qualification for the practice of law "... must have a rational connection with the applicant's fitness or capacity to practice law." Since petitioner complied with question 25, the practical effect of the decision below is to deny petitioner the right to practice law when the only undisclosed affiliations were those "subversive" associations which petitioner might have had before she was sixteen years old. A qualification which requires an answer to question 27, for the purpose of learning about petitioner's possible pre-adolescent subversive associations, cannot have a "rational connection" with petitioner's fitness to practice law. Moreover, a requirement that petitioner characterize her organizations as the Communist Party or as advocating the overthrow of the government by force or violence also has no rational connection with petitioner's fitness to practice law.

4. The foregoing conflicts created by the decision below are not resolved by the invocation of either *Konigsberg v. State Bar of California*, 366 U.S. 36, 45 (1961), or *In re Anastaplo*, 366 U.S. 82, 88 (1961). Even though both *Konigsberg* and *Anastaplo* held that an applicant who refused to answer certain questions could be denied the right to practice law on the ground that his refusal to answer has obstructed a full investigation into his qualifications, this holding cannot rescue the decision below for two basic reasons:

First, "obstruction" was the result of specific findings of fact entered into the record in both *Konigsberg* and *Anastaplo*. In light of *Wood v. Georgia*, 370 U.S. 375, 386-89 (1962), it is probable that today a curtailment of a First Amendment freedom, like association, would need an even more specific finding of fact than in *Konigsberg* or *Anastaplo*. In the present case, there was no finding of fact establishing "obstruction."

Secondly, it is doubtful that "obstruction" in any valid sense could be found in the present case and therefore that the interest of the Committee could "outweigh" that of petitioner. In *Konigsberg*, obstruction was grounded upon ". . . refusals to answer *any* questions relating to his [possible] membership in the Communist Party." *Konigsberg v. State Bar of California*, *supra* at 39 (emphasis supplied). In *Anastaplo*, obstruction was based upon broad-ranging refusals to answer questions about church memberships, political memberships, political loyalties and religious beliefs. *In re Anastaplo*, *supra* at 85, 86 & n.5.

Comparatively speaking, petitioner has furnished more information about her associations than did either *Konigsberg* or *Anastaplo*. She has listed all of the organizations, associations and clubs to which she has belonged during the 10 years since becoming 16 years old. Therefore, in terms of what has been requested and what has been refused, it is impossible to rationally establish a basis for finding obstruction in the present case. Even if the method is still to "weigh" the respective interests involved, the scales must surely tilt in favor of petitioner.

B. *The Issue Is Important.*

Question 27, which petitioner refuses to answer, constitutes a double deterrent to freedom of association. First, one must take care not to join an organization

which might have unorthodox precepts because such membership would become the subject of specific and protracted inquiry when one seeks to become a lawyer in Arizona. This inquiry would delve into the applicant's views and beliefs rather than misconduct or violation of the law. For, according to the Committee, a "yes" answer to question 27

"would lead to an investigation and interrogation as to whether or not the applicant presently entertains the view that a violent overthrow of the United States Government is something to be sought after. If the answer to this inquiry was 'yes' then indeed we would reject the application and recommend against admission." Committee Memorandum at 3, Appendix C, *infra* at 9a (emphasis supplied).

Secondly, after joining an organization one must be constantly on guard to ascertain whether it is really the Communist Party in disguise and what the organization collectively advocates. This is required because the Committee is not interested only in the names of the organizations to which an applicant belongs, for a response to question 25 is insufficient. Instead, the applicant must go the additional step, tell the Committee whether any of the organizations listed in response to question 25 is the Communist Party, and explain whether any of these organizations advocates the overthrow of the government by force or violence.

Question 27, with its resulting impact upon freedom of association, is imposed upon all applicants for admission to the Arizona State Bar. And the problem is not restricted to Arizona. In Nevada, an applicant to practice law must state under oath "whether or not the applicant is, or ever has been, a member of the Communist Party, or of any organization devoted to, or advocating support

of, communism, giving full particulars." 1 NEV. REV. STAT., S. CT. R. 52(2)(k). The sanction for not answering is clear: "... failure to set out information required on the forms, shall be sufficient cause for denial of admission." *Id.* 52(5); Cf. 3A WEST. CAL. BUS. & PROF. § 6068 R. V § 53, R. VII § 71 (Supp. 1968-69). Now pending before a three-judge panel is *Law Students Civil Rights Research Council v. Wadmond*, 291 F. Supp. 772, 775 (S. D. N. Y. 1968), where inquiries similar to Arizona's question 27 are claimed to "... have the effect of deterring and inhibiting the exercise of rights of speech, association and belief guaranteed by the First Amendment."

The necessity for reviewing petitioner's case is emphasized by the fact that, since 1961 when *Konigsberg* and *Anastaplo* were decided, First Amendment protections have been broadened considerably in other employments and contexts. This is true, for example, in the area of compulsory disclosure. *E.g.*, *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 544 (1963) ("... compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] ... effective ... restraint on freedom of association. ..."). The same is true where federal employment is conditioned upon associational disclosure. *E.g.*, *Soltar v. Postmaster General*, 277 F. Supp. 579, 580 (N.D. Cal. 1967) ("This Court is of the opinion that requiring plaintiff [i.e., an applicant for a postoffice job] to answer questions 7 and 8 [which inquired into Communist Party membership] clearly violates his First Amendment rights."); see also *Schneider v. Smith*, *supra*.

A similar application of the First Amendment is evident where government workers are subject to prosecution for their associations (*e.g.*, *United States v. Robel*,

389 U.S. 258, 265 (1967): "The inhibiting effect on the exercise of First Amendment rights is clear."), and where federal health insurance benefits are dependent upon an organizational disclaimer. *E.g.*, *Reed v. Gardner*, 261 F. Supp. 87, 92 (C.D.Cal. 1966) (" . . . Section 103(b)(1) of the Act and the use of the subject question or disclaimer are unconstitutional as violative of the First Amendment. . . ."). The First Amendment has been strengthened also in judging loyalty oaths (*e.g.*, *Elfbrandt v. Russell*, 384 U.S. 11, 18 (1966), where this Court said that the Arizona Act requiring the loyalty oath threatened " . . . the cherished freedom of association protected by the First Amendment. . . ."), and in assessing the requisite state interest permitting intrusion into First Amendment freedoms. *E.g.*, *NAACP v. Button*, 371 U.S. 415, 438 (1963) (" . . . only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms."); *Gibson v. Florida Legislative Investigation Committee*, *supra* at 546 (" . . . overriding and compelling state interests.").

Lawyers should not be denied the same degree of First Amendment protection accorded to seamen, defense workers, teachers, post office clerks and federal health insurance claimants. The decision below conflicts with *Schneider v. Smith*, *supra*, *Spevack v. Klein*, *supra*, and *Schwartz v. Board of Bar Examiners*, *supra*, and the conflicts should be confronted. Even *Konigsberg* and *Anastaplo* do not permit the kind of unmeditated and unfounded conclusion of "obstruction" which might be urged in support of the decision below. Sara Baird should not be forced to answer question 27 as a prerequisite to becoming a lawyer.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert H. Allen

John P. Frank

Peter D. Baird

Levi J. Smith

Counsel for petitioner.

February, 1969.

1a

APPENDIX A

SUPREME COURT

State of Arizona

Phoenix

January 20, 1969

In the Matter of the Application
of SARA E. BAIRD, for admission
to the Arizona State Bar

No. 9498

The following action was taken by the Supreme Court of the State of Arizona on January 14, 1969, in regard to the above-entitled cause:

"ORDERED: Petition for Order to Show Cause =
DENIED."

SYLVIA HAWKINSON, Clerk

By /s/ Lucile Brooks

Assistant Clerk

To Allen & Fels

755 First National Bank Building
Phoenix, Arizona 85004

Mark Wilmer

Committee on Examinations and Admission
Arizona State Bar

858 Security Building
Phoenix, Arizona

APPENDIX B

The First Amendment to the United States Constitution provides in pertinent part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble. . . ."

The Fifth Amendment to the United States Constitution provides in pertinent part: "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ."

The Fourteenth Amendment to the United States Constitution provides in pertinent part: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

ARIZ. REV. STAT. ANN. § 13-561 provides in pertinent part:

"A person who, in a trial, hearing, investigation, deposition, certification or declaration, in which making or subscribing a statement is required or authorized by law, makes or subscribes a material statement under oath, affirmation or other legally binding assertion that the statement is true, when in fact the witness or declarant does not believe that the statement is true or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, is guilty of perjury."

ARIZ. REV. STAT. ANN. § 13-707(C)(Supp. 1969) provides in pertinent part:

"C. A person who knowingly or wilfully becomes or remains a member of the Communist Party of the United States, or its successors, or any of its subordinate organizations, or any other organization having for one of its purposes the overthrow by force or violence of the government of the state of Arizona, or

any of its political subdivisions, and said person has knowledge of said unlawful purpose of said Communist Party of the United States or of said subordinate or other organization, is guilty of sedition against the state."

ARIZ. S. CT. R. 28(c) (Supp. 1969) provides in pertinent part:

"25. List all organizations, associations and club [sic] (other than Bar associations) of which you are or have been a member since attaining the age of 16 years.

"27. Are you now or have you ever been a member of the Communist Party or any organization that advocates overthrow of the United States Government by force or violence?

"STATE OF }
COUNTY OF } ss.

....., being duly sworn, says: I have read the foregoing questions and have answered them fully and frankly. The answers are complete and are true of my own knowledge.

.....
Signature of Applicant

Subscribed and sworn to before me this

day of, A.D. 19.....

.....
Notary Public"

APPENDIX C

PETITION

The petition for order to show cause which was filed with the Arizona Supreme Court provides as follows:

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

IN THE MATTER OF THE
APPLICATION OF SARA E.
BAIRD FOR ADMISSION TO
THE STATE BAR

} PETITION FOR
ORDER TO
SHOW CAUSE

The petition of SARA E. BAIRD respectfully shows as follows:

1. Petitioner is a June, 1967, graduate of the Stanford University Law School and from the time of her graduation to the present has resided continuously in Arizona. In February, 1968, she took the Arizona Bar examination. She is informed and believes, and upon such information and belief alleges, that she passed the examination, but the Committee on Examinations and Admissions of the Supreme Court of the State of Arizona (hereinafter referred to as the "Committee") has refused and still does refuse to recommend petitioner for admission to the State Bar of Arizona.

2. Your petitioner has been informed by the Chairman of the Committee that the reason for the refusal of the Committee to further process her application and to recommend her for admission is that your petitioner

answered "Not Applicable" to Question No. 27 of the document known as "Applicant's Questionnaire and Affidavit," the form of which questionnaire and affidavit is set forth in Arizona Supreme Court Rule 28. Question No. 27 reads as follows:

"Are you now or have you ever been a member of the Communist Party or any organization that advocates overthrow of the United States Government by force or violence?"

3. Question No. 27 is in fact "not applicable" to the application of your petitioner because she fully and truthfully answered Question No. 25 of the Questionnaire and Affidavit, which question reads as follows:

"List all organizations, associations and club (other than Bar associations) of which you are or have been a member since attaining the age of 16 years."

4. Even if applicable, to require petitioner to answer Question No. 27 as a condition to processing her application for admission to the State Bar of Arizona or as a condition to her admission to the Bar is a violation of petitioner's rights under the Constitution of the State of Arizona and under the Constitution of the United States, particularly the First Amendment, as to freedom of speech and association, the Fifth Amendment, as to self-incrimination, and the Fourteenth Amendment, as to due process of law and equal protection, both separately and as making applicable to state action the First and Fifth Amendments to the United States Constitution.

WHEREFORE, your petitioner prays that this Court make and enter its order requiring the Committee on Examinations and Admissions of the Supreme Court of the State of Arizona to be and appear before this Court at a date and time certain then and there to show cause, if any it may have, why petitioner should not forthwith

be recommended for admission to the State Bar or, in the alternative, to show cause why petitioner's application should not be processed by the Committee without requiring of petitioner any further answer to Question No. 27 of Applicant's Questionnaire and Affidavit.

ALLEN & FELS

By /s/ Robert H. Allen

Robert H. Allen

755 First National Bank Building
Phoenix, Arizona 85004

STATE OF ARIZONA

COUNTY OF MARICOPA

} ss.

SARA E. BAIRD, being first duly sworn, deposes and says:

That she is the petitioner in the foregoing Petition; that she has read the foregoing Petition, knows the contents thereof, and that the same is true of her own knowledge, except for those matters therein alleged upon information and belief, and as to such matters, she believes the same to be true.

/s/ Sara E. Baird

SARA E. BAIRD

Subscribed and sworn to before me this 29 day of November, 1968.

/s/ John L. Hay

Notary Public.

My commission expires:

July 7, 1970

RESPONSE

The response of Committee on Examinations and Admissions to Order to Show Cause which was filed with the court below is as follows:

IN THE SUPREME COURT OF THE STATE OF
ARIZONA

IN THE MATTER OF THE APPLICATION
OF SARA E. BAIRD FOR ADMISSION
TO THE STATE BAR

No. 9493

RESPONSE OF COMMITTEE ON EXAMINATIONS
AND ADMISSIONS TO ORDER TO SHOW CAUSE

The Committee on Examinations and Admissions of the Supreme Court of the State of Arizona for its response to the Petition for Order to Show Cause and said Order to Show Cause, respectfully shows the Court:

1. Answering Paragraph 1 of said Petition, upon information and belief the Committee admits the allegations thereof, excepting that with respect to the allegation that said petitioner "passed the examination", the Committee respectfully shows the Court that it has followed the practice uniformly of permitting applicants to sit for an examination even though their file is not fully cleared upon the condition that such permission is conditional and dependent upon the final approval by the Committee of the showing made in the application and by the applicant as to fitness of the applicant for the practice of law.

2. Your Committee admits the allegations of Paragraph 2 of said Petition.

3. Answering Paragraph 3, your Committee denies the conclusion therein stated.

4. Answering Paragraph 4, your Committee denies the conclusions therein set forth.

Further responding to said Petition, your Committee respectfully shows the Court that it is constituted pursuant to the provisions of Rule 28 of the Rules of the Supreme Court of the State of Arizona and as such has only the powers, responsibilities and obligations as therein set forth and as are set forth with particularity in Rule 28(c) of the Rules of the Supreme Court of the State of Arizona as amended. Said Rule 28(c) as a part thereof specifically prescribes the form of the Applicant's Questionnaire and Affidavit which said affidavit, paragraph 27 thereof, specifically requires an answer to the question as set forth in petitioner's Paragraph 2 of her Petition for Order to Show Cause. Your Committee does not believe it has the authority or jurisdiction to do other than require compliance with the rules of this Court unless and until the same are amended, altered or rescinded by this Court.

This response is supported by the Memorandum hereafter appearing responding to the Memorandum of the applicant as attached to her Petition for Order to Show Cause.

Respectfully submitted,
HENRY R. MERCHANT, JR.
DAVID K. WOLFE
WILLIAM E. KIMBLE
GEORGE READ CARLOCK
MARK WILMER

By /s/ Mark Wilmer
Chairman

COMMITTEE ON EXAMINATIONS AND
ADMISSIONS

858 Security Building
Phoenix, Arizona 85004

COMMITTEE MEMORANDUM

Relevant excerpts from the Committee Memorandum which was filed with the Court below are as follows:

"Unless we are to conclude that one who truly and sincerely believes in the overthrow of the United States Government by force and violence is also qualified to practice law in our Arizona courts, then an answer to this question is indeed appropriate. The Committee again emphasizes that a mere answer of 'yes' would not lead to an automatic rejection of the application. It would lead to an investigation and interrogation as to whether or not the applicant presently entertains the view that a violent overthrow of the United States Government is something to be sought after. If the answer to this inquiry was 'yes' then indeed we would reject the application and recommend against admission." Committee Memorandum at 3.

"I also believe that Mrs. Baird should realize that even though she answered the question that she had at one time been a Communist or had otherwise been associated with organizations not regarded as friendly to the United States Government, this would not necessarily cause us to reject her application. We would undoubtedly want to ask her some questions as to her present beliefs and as to other matters which would bear upon the effect such membership would have on her qualifications to practice law." Committee Memorandum at 1.

"The Committee would again emphasize to this Court that if the answer to question No. 27 is 'yes' the committee will then endeavor to ascertain if Sara Baird does adhere to the view that the overthrow of the

Government of this State and of the United States by force and violence would be a desirable objective and that she would expect to actively support such views. If this is the conclusion reached by the committee, it will undoubtedly refuse to recommend Sara Baird for admission to the Bar of the State of Arizona. Should the conclusion be that her membership is of a nominal character and that she does not participate and adhere to the views that a violent overthrow of our government is desirable, then the committee would have no legal basis for refusing to recommend her for admission" Committee Memorandum at 7-8.

